# Gifts vs Loans from Parents in Family Law Matters

During the course of a de facto relationship or marriage, it is not uncommon for one or both of parties to receive financial assistance from family members.

After parties separate this can often be a significant issue of contention as there are sometimes differing views as to whether monies received by a party were intended as a gift or a loan.

**Let us consider the hypothetical example of John and Mary below:**

1. John and Mary were married in 2014.

2. John's Father provided John with $200,000 in 2015 to assist him and Mary in purchasing their first house together.

3. John and Mary purchased a property for $400,000 in 2015 and obtained a mortgage for $200,000.

4. John and Mary then separate in 2024.

5. The property is now worth $1,000,000 and there is no mortgage on the property.

6. John says that his Father loaned the $200,000 to the parties and it was expected to be repaid in the future.

7. On the other hand, Mary says that the $200,000 was gifted to the both of them and is not a loan that is repayable.

## How does the Court treat funds like the monies provided by John's Father?

It depends on the evidence in respect of the monies provided by John's Father.

If it is considered a gift, generally a Court will treat the gift as being for the benefit of the person whose parents gave the gift – in this case it will be John.

Assuming that it is considered a gift, when assessing entitlements, the monies provided by John's Father will be treated as a contribution on John's side of the ledger when weighing up entitlements. This means that it is treated as an extra contribution that he made and would likely increase his entitlement to the overall pool of assets available for division.

## So, when will the monies provided by John's Father be considered a loan?

There are many factors which may be indicative that the monies were a loan, for example:

1. Was there a loan agreement drawn up at or around the time the monies were provided?

2. Have the parties repaid any of that $200,000 to John's Father?

3. Were there any discussions between John and Mary and John's Father as to the existence and terms of the loan?

4. Was there an expectation of repayment?

5. Is there any security provided by John's Father? For example, is there anything registered over the title of the property?

6. Whether there has been a representation to outside agencies such as banks and Centrelink regarding the categorisation of the monies provided by John's Father.

The Federal Circuit and Family Court of Australia ("the FCFCOA") has jurisdiction to deal with loans between parties such as John and Mary and third parties such as John's Father. How the loan is treated depends on the evidence that is provided about the monies.

Where the loan is unsecured, the court can choose to deal with the pool of assets by either deducting the loan from the pool of assets or not. A court is less likely to deduct the loan if it is vague or uncertain and if it is unlikely to be enforced.

## Parents, are you considering loaning money to your children?

It is important that, if parents are considering lending money or property to a child who is either married or in a de facto relationship (or even before any relationship) that there be clear documentation to demonstrate that it is a loan.

The different treatment of money advanced by parents as either a gift or a loan can significantly affect the outcome of a property settlement. Parents can also end up losing their money to their child's former spouse/partner if it is not properly secured.

If this sounds like you, then it is important to seek legal advice from an experienced lawyer about these issues prior to advancing any significant amounts of money.

For more information, please **contact us here** or meet the **Andersons Family Law team** here.